

APPEAL NO. 040242
FILED MARCH 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 5, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th (April 14 through July 13, 2003), 11th (July 14 through October 12, 2003), and 12th (October 13, 2003, through January 11, 2004), quarters. The claimant appealed, disputing the determination of nonentitlement for the SIBs quarters in dispute. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant attached correspondence dated January 30, 2004, to his appeal which was not offered into evidence at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant sustained a compensable low back injury on _____, resulting in a 22% impairment rating; that the claimant did not commute his impairment income benefits; that the qualifying period for the 10th quarter began on December 31, 2002, and ended on March 31, 2003; that the qualifying period for the 11th quarter began on April 1 and ended on June 30, 2003; and that the qualifying period for the 12th quarter began on July 1 and ended on September 29, 2003. At issue is whether the claimant made a good faith effort to seek employment commensurate with his ability to work and whether his unemployment was a direct result of the impairment for the compensable injury. These were questions of fact for the hearing officer to resolve.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The disputed matters regarding the good faith and direct result criteria for SIBs entitlement presented questions of fact for the hearing officer to resolve from the evidence presented. We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the 10th, 11th, and 12th quarters is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge